

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
BRANDON SALUS, ALAN FELIX :
IPANAQUE CORDOVA, and BRANDON :
RUCKDASHEL, on behalf of themselves and :
others similarly situated, :
:

Plaintiffs, :

- against - :

TSE GROUP LLC d/b/a B.B. KING BLUES :
CLUB AND GRILL and TSION :
BENSUSAN :
:

Defendants. :
:
-----X

Civil Action No.: 07 Civ. 03142
(GBD)(DCF)

**DECLARATION
OF TSION BENSUSAN**

I, TSION BENSUSAN, hereby declare under the penalty of perjury pursuant to 28 U.S.C. 1746 that the following is true and correct:

1. I am employed as the Director of Operations for TSE Group LLC d/b/a B.B. King Blues Club and Grill ("B.B. King" or "Restaurant") (B.B. King and I are collectively referred to herein as "Defendants"). I have been employed by B.B. King since June 2000. I submit this declaration in support of Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Conditional Collective Certification, Court Facilitation of Notice Pursuant to 29 U.S.C. §216(b) and a Protective Order (the "Motion"). I am fully familiar with the facts set forth herein.

A. The Parties

2. B.B. King is solely owned by TSE Group LLC, which is a New York limited liability company. B.B. King is located at 237 West 42nd Street, New York, New York.

3. The three named plaintiffs in this case – Brandon Salus, Alan Felix Ipanaque Cordova and Brandon Ruckdashel (collectively, the “Named Plaintiffs”) – are former Servers at B.B. King.

4. Eric Owens, Laura Ganzero, David Czyzyk, Nina Carpenter and Adam Pierce (collectively, the “Opt-In Plaintiffs”), are also former Servers at B.B. King (the Named Plaintiffs and the Opt-In Plaintiffs are collectively referred to herein as “Plaintiffs”).

B. Background

5. B.B. King is comprised of two distinct spaces – a Showcase Room and Lucille’s Grill. The Showcase Room is a venue that presents one or two world-class music acts on a nightly basis.

6. Guests must purchase tickets in order to gain admission to the musical acts that are featured in the Showcase Room.

7. Lucille’s Grill offers its guests free live music on a nightly basis.

8. Table service is available for guests in both the Showcase Room and in Lucille’s Grill. Both the Showcase Room and Lucille’s Grill can also be rented for private parties.

C. The Servers

9. B.B. King employs a number of individuals in a variety of different titles including “Servers.”

10. The Servers are assigned to work in either the Showcase Room or Lucille’s Grill on a particular day. Before the Restaurant is opened to the public, the Servers are responsible for setting up the tables by placing items such as silverware, napkins and votives on the tables. Once the customers arrive, the Servers are responsible for escorting the customers to their seats, answering customers’ questions, addressing such customers’ concerns, if any, taking food and

drink orders and delivering the bill to the customers. Once the customers leave, the Servers are responsible for, among other things, wiping down the tables and putting away the votives, silverware and condiments.

11. The Servers are compensated through an hourly wage and tips. The Servers' hourly wage is based upon the applicable minimum wage allowed for tipped waiters. Each bill that a B.B. King customer receives includes a fifteen percent service charge and sets forth a separate section on the bill for the customer to leave a tip for the Server.

12. If the customer pays his/her bill in cash, the Restaurant does not retain any portion of the 15% service charge or any tips that the customer agrees to pay. If a customer pays his/her bill by credit card, the Restaurant deducts a 3% fee that the Restaurant is charged by the credit card companies for liquidating credit card tips. The Restaurant does not retain any other portion of the service charge or tips.

13. If a Server is assigned to work a private party, his or her compensation varies depending on the size of the party. Regardless of the size of the party, the Servers' hourly wage is equal to or above the applicable minimum wage allowed for tipped waiters.

14. At such parties, the Restaurant includes a service charge on the bill ranging from 18% to 20%, depending on the size. If the party is for under 100 guests, the Restaurant does not retain any portion of the service charge or any tips that the customer agrees to pay.

15. If the party is for 100 guests or more, B.B. King retains the service charge. Prior to such parties, B.B. King specifically explains to the customer who is paying for such party that the service charge is retained by the Restaurant and not distributed among the Servers. B.B. King further explains to the customer that the Restaurant will not retain any tips that the

customer chooses to give the Servers. The Servers are paid above the minimum wage under these circumstances.

16. B.B. King has never maintained a formal policy or practice of requiring Servers to pay for a customer's bill when a customer left the Restaurant without paying his/her bill ("a walk-out") or when a customer otherwise refused to pay his/her bill.

17. To the contrary, B.B. King has specifically advised its managers not to deduct money from the Servers' pay to cover walk-outs. Attached hereto as Exhibit A is a true and correct copy of a memorandum, dated April 13, 2007, which was prior to the institution of this lawsuit, that I sent to each of the Restaurant's managers reiterating certain of the Restaurant's policies including the policy that the managers are not to deduct money from the Servers' pay to cover walk-outs. Each of the Restaurant's managers signed the memorandum. However, in one instance to the best of B.B. King's knowledge, Brandon Salus had a deduction made for a walk-out.

18. Similarly, B.B. King has never maintained a formal policy or practice of requiring Servers to reimburse B.B. King for spills or for breaking B.B. King's property (*i.e.*, a plate or glass). To the best of B.B. King's knowledge, no Server has ever been required to reimburse the Restaurant for spills or breakage.

**D. Servers' Request That Porters Assume
Responsibility For Setting Up The Showcase Room**

19. Prior to December 2003, the Servers were also responsible for arriving at the Restaurant before it opened for business and setting up the Showcase Room. Certain shows were designed as "standing room" shows while others were designed as "seated shows." Thus, the Servers were required to either remove tables and chairs from the Showcase Room or move

tables and chairs into the Showcase Room depending upon the type of event that was scheduled in the Showcase Room on a given night.

20. In or around December 2003, Gabrielle Brechner ("Ms. Brechner"), a former manager at B.B. King, approached me and informed me of her recent conversation with the Restaurant's Servers. Specifically, Ms. Brechner explained to me that the Servers informed her that they did not want to be responsible for setting up the Showcase Room before the first show of each night.

21. The Servers then suggested that B.B. King's Porters¹ should have such responsibility and offered to each pay \$5.00 per week to the Porters for taking on these responsibilities.

22. I agreed to the Servers' request and, beginning in or around December 2003, B.B. King transferred \$5.00 a week to the Porters.² B.B. King did not retain any portion of these payments.

23. No Server, including Plaintiffs, ever complained to the Restaurant about such process nor did any Server, including Plaintiffs, ever decline to participate in such process.

24. In or around May 2007, B.B. King announced that it was no longer going to transfer \$5.00 a week to the Porters.

25. In connection therewith, B.B. King paid current and former Servers for each \$5.00 transfer that B.B. King had previously made to the Porters on their behalf. B.B. King also provided Servers with an additional payment representing a minimum of 18% of the total amount

¹ The Porters are responsible for making sure that the Showcase Room and Lucille's Grill are clean before they are opened to the public.


² From time to time, the \$5.00 transfer was not applied to certain Servers due to administrative errors.

that B.B. King had previously transferred on behalf of that Server to the Porters. In exchange for such payments the Servers were asked to sign a form acknowledging their receipt of such payments and releasing Defendants from potential claims stemming from their employment ("Acknowledgement").

26. In the Acknowledgement, the Servers confirmed that B.B. King had transferred \$5.00 a week to the Porters at their request and that B.B. King is no longer making such deductions. The Servers further agreed to release B.B. King from any and all claims arising out of their employment at the Restaurant.

27. B.B. King did not require the Servers to sign the Acknowledgement nor did B.B. King threaten to terminate the employment of any current Server who refused to sign the Acknowledgement. Moreover, B.B. King did not withhold any Server's payment on the grounds that he/she refused to sign the Acknowledgement.

Dated: July 16, 2007



Tsion Bensusan

Exhibit A

TSE Group LLC

Memo

To: All Managers
From: Tsion Bensusan
CC:
Date: 4/13/2007
Re:

To All Managers:

This memo is to reiterate policy on all staff members:

Lateness – is an issue that should be dealt with immediately. We need all staff members present at the scheduled time in order for the evening events to function properly.

Uniforms – All staff members in each FOH dept must be in Uniform while working. In addition, all uniforms must be clean, properly ironed, shirts tucked in, and must be approved by management to our company standard.

Walkouts – Must be dealt with appropriately. Our policy is not to deduct from the server. Each walkout must be immediately documented by a write up and signed by the server that moment. Action taken will be determined either with Suspension or Termination.

Band Payments – All Band Payments will be retrieved from office safe only. Do Not retrieve payments from back office. When delivered from bank, will go immediately to office.

Money - Do not remove any money, deposits, change out of Managers Office. All will be picked up directly from Managers Office

Any staff member that does not abide by all of our procedures shall be written up, suspended, and/or terminated.

Thank You




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